IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 731 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATHAJI M JADEJA

Versus

STATE OF GUJARAT

Appearance:

MR NS SHETH for Petitioner No. 1
MR BY MANKAD AGP for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 26/12/2001

ORAL JUDGEMENT

This petition has been filed for a direction to the respondent to pay the salary of the petitioner for the remaining period of service after 30-10-1983 till the petitioner would have lawfully retired and for further direction to the respondent to pay to the petitioner his

retirement benefits like gratuity and pension on the basis of the date of absorption i.e. 1.3.1956.

2. The petitioner was an employee on the post of Havaldar in the category of lass-IV on the permanent basis in the year 1939 under earstwhile Morbi State then falling under Kutchh area. From 1-3-1953 the petitioner was absorbed as Kotwal under the Chief Commisisoner Kutchh. On all the occasions, the petitioner was continued to serve as Kotwal under the instructions issued by the Central Government. Thereafter, the petitioner was transferred and posted at different places on different occasions. The petitioner was promoted as Chokidar. The order dated 2-10-74 has been annexed with this petition as Annexure-B. It is also stated that the wrong birth date of the petitioner was mentioned as 14-10-1923 in the service record of the petitioner. The petitioner made a representation before the competent authority and the case of the petitioner was referred to the concerned Civil Surgeon of Bhuj. In the opinion of the Civil Surgeon, Bhuj, the age of the petitioner was about 55 years at the relevant in August-September, 1983 and that certificate showing the birth date of the petitioner was not accepted by the employer and the petitioner was retired compulsorily on 31-10-1983. Thereafter, the petitioner made a representation to the authority concerned for payment of retiral benefits - dues and the amount of Rs.2628/- was paid to the petitioner. It is submitted that the service of the petitioner should have been treated from 1-3-1956 for retiral benefits. However, the petitioner was not paid any pension after his retirement. Thereafter, the petitioner made the representation to the Chief Minister in that respect and the same replied vide letter dated 13-11-1987. It is also stated one Jusa Ibrahim Bhatti was also absorbed in the year 1956 as Kotwal by the then Chief Commissioner of Kutchh is being given Rs.500/- p.m. as pension by the State at present. As such, the petitioner is entitled to get the pensionary benefits. It appears that the petitioner was absorbed as Kotwal on 1-3-1956 by the Chief Commissioner, Kutchh appointed by the Central Government and the petitioner was promoted as Chokidar vide order dated 2-10-1974. As per the date of birth of the petitioner mentioned in the service record, the petitioner was retired on 31-10-1983.

3. So far as the contention regarding the wrong date of birth of the petitioner mentioned in the service record is concerned, this contention is not sustainable in the eye of law inasmuch as in the opinion of the Civil Surgeon, Bhuj, the petitioner was aged about 55 years in

the year 1953. The opinion of the Civil Surgeon, Bhuj cannot be said to be a conclusive and substantial evidence. The petitioner has not filed any substantial and stringent evidence with regard to his birth date. Hence, the State Government has not committed any error in rejecting the pleading of the petitioner regarding birth date of the petitioner. It is stated that the petitioner has wrongly retired on 31-10-1983. But it appears from the record of this Court that the petitioner should have retired on 31-10-1983 on superannuation age as per the birth date of the petitioner mentioned in the service record.

4. Next questions regarding service of the petitioner and his entitlement of the pensionary benefits are concerned, the petitioners appears to have been absorbed on 1-3-1956 as Kotwal by the Chief Commissioner, Kutchh who was appointed by the Central Government. In the Annexure-B "Badhati" is mentioned which means that the petitioner was promoted as Chokidar. As such, it cannot be said that the petitioner was absorbed on 2-1-1974 in the service and he was already in service as he was already absorbed on 1-3-1956 as Kotwal by the Chief Commissioner of Kutchh after bifurcation of Kutchh State has become a part of Gujarat State. It is nowhere stated that the petitioner's services were not taken after formation of the Gujarat State. But appears that the petitioner was absorbed on 1-3-1956 as Kotwal by the Chief Commissioner appointed by the Central Government and the petitioner remained in the service on the date of formation of new Gujarat State in the year 1960. As such, the petitioner's service remained continued in service and he was promoted as Chokidar vide order dated 2-10-1974 Annexure-B. If the services of the petitioner are taken from 1-3-1956 to 31-10-1983 then the petitioner must be entitled to the pensionary benefits as the petitioner has served the department for more than 20 years. As such, it appears that the State Government has considered the service of the petitioner from 2-10-1974 til 31-10-1983 being less than 10 years period.

5. In the facts and circumstances of this case and in the interest of justice, the matter can be examined and decided by the Secretary, Revenue Department, Gujarat State. Therefore, it is directed that this petition be treated as representation of the petitioner and be sent to the Secretary, Revenue Department, Gujarat State who shall decide the representation of the petitioner in accordance with law after considering the service record of the petitioner as well as in light of the observations made in this judgment and in case the petitioner is found

eligible for the pensionary benefits then, the petitioners should be paid all retiral benefits within three months thereafter. The petitioner shall be informed about the decision of the Secretary, Revenue Department, Gujarat State. The writ of this Court be issued to the Secretary, Revenue Department, Gujarat State.

6. In view of the above directions and observations, this petitions stands disposed. Rule is made absolute to the aforesaid extent, with no order as to costs.

-0-0-0-0-0-

/JVSatwara/